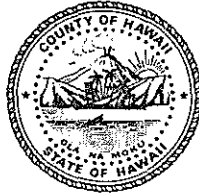


Harry Kim
Mayor



Christopher J. Yuen
Director

Roy R. Takemoto
Deputy Director

County of Hawaii

PLANNING DEPARTMENT

25 Aupuni Street, Room 109 • Hilo, Hawaii 96720-4252
(808) 961-8288 • Fax (808) 961-8742

January 22, 2002

John K. Kai, Etal
5650 River Street
West Linn, OR 97068

Dear Mr. Kai:

VARIANCE PERMIT NO. 1247 (VAR 01-064)

Applicants: JOHN K. KAI, ET AL.

Owners: DEBORA HART, ET AL.

**Request: Variance from Minimum Yards
and Open Space Requirements,
Pursuant to Chapter 25, Zoning**

Tax Map Key: (3) 4-5-020:008, Lot 11-A

After reviewing your application and the information submitted, the Planning Director hereby approves your variance request subject to the conditions stated herein. Variance Permit No. 1247 allows portions of a dwelling to remain on the subject property "AS BUILT" with a minimum 16.8 feet front yard (in lieu of the required 20.00 feet) and corresponding front yard open space of 13.7 feet (in lieu of the required 14.00 feet) in accordance with the applicant's site plan dated May 3, 2001 (Revised). The variance is from the Minimum yards and Open space requirements, pursuant to the Zoning Code, Chapter 25, Article 5, Division 7, Section 25-5-7, Minimum yards, (a) (2) (A), and Article 4, Division 4, Section 25-4-44, Permitted projections into yards and open spaces.

BACKGROUND AND FINDINGS

1. **Location.** The subject property, containing 12,197 square feet is Lot 11-A of Teixeira Subdivision of 1966, Kaa Homesteads, Hamakua, Hawaii or Tax Map Key (TMK) 3rd Division, 4-5-020:008, Lot 11-A.

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The property is zoned Single-Family Residential (RS-10) by the County and designated Urban "U" by the Land Use Commission (LUC).

2. **Application**. The applicants (previous owners), on behalf of the current owners, submitted the variance application, tax clearance, and \$250.00 variance filing fee on August 16, 2001.
3. **Site Plan**. The applicant's site plan, drawn to scale and dated May 3, 2001, was prepared by Paul H. Murray & Associates, LLC. The site plan identifies the property boundaries and denotes the location of the existing dwelling and other site improvements.
4. **Building Permit Records**. The existing dwelling was issued a building permit and related construction permits to construct the existing dwelling improvements.
5. **Agency Comments and Requirements:**

- a. **Real Property Tax Office**. The applicant submitted a copy of "REAL PROPERTY TAX CLEARANCE" dated December 19, 2001 stating:

"This is to certify that the real property taxes due to the County of Hawaii on the parcel(s) listed above have been paid up to and including December 31, 2001.

This clearance was requested on behalf of PRESLEY & DEBORA HART for the County Planning Department and is issued for this/these parcel(s) only."

- b. **Department of Health**. The State Department of Health (DOH) memorandum dated August 30, 2001, in the subject variance file states:

"We have no objections to the proposed variance application. However, minimum setback requirements for existing wastewater systems needs to be maintained."

Note: A copy of a site plan signed note by the surveyor, Paul H. Murray states: "EXISTING CESSPOOL LOCATED ON LOT UNDETERMINED JUNE 27, 2001".

- c. **Department of Public Works (DPW).** The Department of Public Works (DPW) memorandum dated September 20, 2001, states in part:

"We have reviewed the subject application forwarded by your memo dated and August 21, 2001 and oppose the approval of the application for the reason noted below.

Building permit 800113 and electrical permit EH54822 for the subject dwelling were never finalized. Please refer questions regarding permits to the Building Division.

If, in fact, the hollow tile wall (HTW) is encroaching into the County right-of-way, it shall be relocated or removed."

The DPW-Building Division memorandum dated September 5, 2001, states in part:

"We oppose the approval of the application for the reasons noted below.

Building permit 800113 & electrical permit EH54822 for the subject dwelling were never finalized."

Note: According to recent DPW-Building Division records, B No. 800113 was "finalized" on December 12, 2001 and electrical permit EH54822 was "O.K. BY INSPECTOR-NO DATE".

5. **Notice to Surrounding Property Owners.** It appears that the applicants mailed notice of the variance request to the surrounding property owners on or about September 24, 2001.
6. **Comments from Surrounding Property Owners or Public.** No oral or written objections to the surrounding property owners or general public were received.

SPECIAL AND UNUSUAL CIRCUMSTANCES

It appears that the building encroachment problems were discovered during the sale of the subject property. The applicants submitted a recent survey map/site plan that identifies the location of

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the existing dwelling and other site improvements. The site plan identifies the distance between the dwelling and attendant roof eaves from the existing boundary line(s). Portions of the existing dwelling was constructed into minimum yards and respective open space requirements required by the Zoning Code. The previous owners (applicants) were unaware of the building encroachment problems and building permit issues. No evidence has been found to show indifference or premeditation by the previous owners to deliberately create or intentionally allow the building encroachment problems to occur.

The existing dwelling was constructed under valid building permit(s) issued to the previous owners (applicants). It appears that the building inspections of the premises, during building construction and throughout the life of the building permits did not disclose any building encroachments or setback/building permit irregularities.

Therefore, considering the foregoing facts and circumstances concerning the sale of the property, it is felt there are special or unusual circumstances applying to the subject property which exist either to a degree which deprive the applicants of substantial property rights that would otherwise be available, or to a degree which obviously interferes with the best use or manner of development of the subject property.

ALTERNATIVES

At this time there are no reasonable alternatives in resolving the difficulty of the applicants or current owner(s). Alternatives available to the applicant or current owner(s) to address and correct the existing building encroachments include the following actions:

1. Remove or truncate the "corners" of the existing dwelling's living area and modify the attendant roof eaves that encroach within the affected yards and corresponding open space requirements.
2. Redesign and relocate the existing dwelling to fit within the building envelope prescribed by the Zoning Code and other design and remedial building alternatives.

To require or impose removal of this encroachment and the necessary changes to the attendant roof eave(s) would seem unreasonably harsh and uneconomical at this time. The removal of the existing encroachments or relocation of the dwelling may disrupt the dwelling's structural integrity, change internal room lighting and air circulation, and change the building's overall building geometry and exterior character.

INTENT AND PURPOSE

The intent and purpose of requiring building setbacks within a subdivision are to assure that adequate air circulation and exposure to light are available between permitted structure(s) and boundary/property lines. These purposes would not be undermined by this variance since the existing building encroachments into the affected yard(s) and respective open spaces are not physically and visually obtrusive from adjacent property(s) or the existing rights-of-way, and do not depreciate or detract from the character of the surrounding neighborhood, public uses, and the existing and surrounding land patterns.

Based on the foregoing findings, this variance request would be consistent with the general purpose of the zoning district and the intents and purposes of the Zoning Code, Subdivision Code and the County General Plan. Furthermore, the variance request will not be materially detrimental to the public's welfare and will not cause substantial adverse impact to the area's character and to adjoining properties.

DETERMINATION

This variance request is approved subject to the following conditions:

1. The applicant or current owners, their assigns or successors shall be responsible for complying with all stated conditions of approval.
2. The applicants/current owner(s), successors or assigns shall indemnify and hold the County of Hawaii harmless from and against any loss, liability, claim, or demand for the property damage, personal injury, or death arising out of any act or omission of the applicants/owners, their successors or assigns, officers, employees, contractors, or agents under this variance or relating to or connected with the granting of this variance.
3. Portions of the existing dwelling and roof eaves will not meet Chapter 25, the Zoning Code's, minimum yard and open space requirements. The approval of this variance allows portions of the existing dwelling or building encroachments identified on the applicant's site plan, dated May 3, 2001 (Revised), to remain on the subject TMK property, "AS BUILT".

The current owners of the CMU wall identified on the subject TMK property and along a common boundary line shared with adjoining makai property (TMK: (3) 4-5-020:007, Lot 20-B-1) shall contact the DPW to address the CMU constructed

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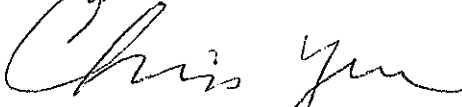
within Loke Street (County owned Right-of-Way). These wall encroachment issue shall be resolved between the respective owners of the CMU wall and the DPW-Engineering Division in accordance with provisions afforded by Chapter 22, Article 3, of the Hawaii County Code 1983 prior to any further changes in ownership or change in property title.

No permit to allow an ohana dwelling or building permit issued to construct an "ohana" dwelling shall be granted to the subject TMK property, subject to provisions of the Zoning Code or State Law, which may change from time to time.

4. Future building improvements and permitted uses shall be subject to State law and County ordinances and regulations pertaining to building construction and building occupancy.

Should any of the foregoing conditions not be complied with, the Planning Director may proceed to declare this Variance Permit null and void.

Sincerely,



CHRISTOPHER J. YUEN
Planning Director

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xc: Hank Correa Realty
Real Property Tax Office
Kona Planning Department